

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LINDA M. CHAMPAGNE and U.S. POSTAL SERVICE,  
POST OFFICE, Tok, AK

*Docket No. 00-2234; Submitted on the Record;  
Issued December 11, 2001*

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DECISION and ORDER

Before WILLIE T.C. THOMAS, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly determined that an overpayment of compensation in the amount of \$750.88 occurred; and (2) whether the Office abused its discretion in denying waiver of recovery of the overpayment.

The Office accepted appellant's April 7, 1995 claim for right wrist tenosynovitis and aggravation of arthritis of the pisiform and triquetral carpal wrist bone, and approved surgery for exploration of the volar distal forearm with right tenosynovectomy. The Office also authorized pisiform and anconeus right elbow transfer.

In a letter dated June 14, 1999, the Office notified appellant that it made a preliminary finding that she had been overpaid compensation benefits in the amount of \$750.88. The overpayment occurred because appellant was paid at an incorrect rate from August 12 to 17, 1998 and from September 19 to November 6, 1998. It further noted that she was in a paid leave status from October 31 to November 6, 1998 and not entitled to compensation from September 19 to 22, 1998. The incorrect rate was as the result of an error by the claims examiner who calculated appellant's compensation based on a 40-hour work week when she only worked a 36-hour work week. The Office therefore incorrectly relied on a weekly pay rate of \$805.50 rather than \$724.95 to determine her compensation payment. Using the incorrect weekly salary rate, the Office paid appellant compensation from August 12 to 17, 1998 in the amount of \$483.30, from September 19 to October 30, 1998 the Office paid compensation in the amount of \$3,624.78, and from October 31 to November 6, 1998 the Office paid compensation in the amount of \$604.13. The total compensation paid was \$4,712.21. The Office stated that appellant was entitled to \$466.04 for August 12 to 17, 1998, that appellant was entitled to no compensation from September 19 to 22, 1998 and that appellant was entitled to \$3,495.29 compensation from September 23 to November 6, 1998. Appellant did not claim wage loss until September 23, 1998. The Office noted that appellant was overpaid by \$750.88 which was the difference between \$4,712.21, the amount paid and \$3,961.33, which was what she should have been paid.

The Office found that appellant was without fault because she was not aware that an error had been made, she did not file a false claim nor did she accept payment which she should have

known was incorrect. The Office then explained the conditions under which she might obtain a waiver of recovery. The Office informed appellant that, if she believed that she should receive a waiver instead of repaying the overpayment, she may, within 30 days of the date of the notice, request a telephone conference with the district Office; request that the district Office issue a final decision on the written evidence currently of record; or request a prerecoument hearing before a representative of the Branch of Hearings and Review. The Office noted that the following issues could be addressed at such a hearing: whether or not an overpayment actually occurred and the amount; and whether or not the Office should collect the overpayment. The Office further noted that whichever course of action appellant chose, she should send the following to the Office: a detailed explanation of her reasons for seeking waiver; a completed Form OWCP-20 (copy enclosed); and supporting documents, to include copies of income tax returns, bank account statements, bills and cancelled checks, pay slips and other records to support income and expenses shown on Form OWCP-20.

The Office also stated that it would deny waiver if appellant failed to furnish the information requested on the enclosed Form OWCP-20 within 30 days.<sup>1</sup>

The Board notes that the Office paid appellant compensation from August 12 to 17, 1998 and from September 19 to 22, 1998 even though appellant had not filed a claim for compensation for those time periods.

In a decision letter dated May 8, 2000, the Office determined that the circumstances in appellant's case did not warrant a waiver of overpayment and that she would be required to repay \$750.88. The Office noted that appellant had not replied to its June 14, 1999 notice in which the Office requested financial information.

The Board finds that the Office properly determined that appellant received an overpayment of compensation benefits in the amount of \$750.88. The Office determined that appellant had been erroneously paid an additional amount based on the Office's incorrect understanding that appellant worked a 40-hour week when she worked a 36-hour week and therefore paid her compensation based on more hours than she worked. This resulted in an overpayment of \$750.88. The Office, therefore, properly determined the amount of the overpayment.

Further, the Board finds that the Office properly denied appellant's request for a waiver of the overpayment.

Section 8129(a) of the Act<sup>2</sup> provides that, where an overpayment of compensation has been made "because of an error of fact or law" adjustments shall be made by decreasing later payments to which an individual is entitled. The only exception to this requirement is a situation which meets the tests set forth as follows in section 8129(b): "Adjustments or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of [the Act] or would be against equity and good conscience."<sup>3</sup>

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<sup>1</sup> At the time of the notice to appellant, she was receiving compensation from the Office.

<sup>2</sup> 5 U.S.C. § 8129(a).

<sup>3</sup> 5 U.S.C. § 8129(b).

With respect to whether recovery of the overpayment would be against equity and good conscience, the Federal (FECA) Procedure Manual<sup>4</sup> provides that recovery of an overpayment would be against equity and good conscience when any individual who received by the Office an overpayment would experience severe financial hardship in attempting to repay the debt, when recovery of an overpayment derived no personal gain from the incorrect payments and had no knowledge of the compensation benefits that were paid to him or her, or when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. In making such a decision, the Office does not consider the individual's current ability to repay the overpayment.<sup>5</sup>

The Office offered appellant an opportunity to submit evidence regarding waiver of the overpayment prior to finalizing the overpayment determination. The record does not indicate that appellant submitted any evidence with respect to the relevant issues on waiver. Appellant has the responsibility to provide pertinent financial information and failure to provide such information will result in denial of waiver of the overpayment.<sup>6</sup> Accordingly, the Office properly denied waiver in this case.

The Office of Workers' Compensation Programs' decision dated May 8, 2000 is affirmed.

Dated, Washington, DC  
December 11, 2001

Willie T.C. Thomas  
Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member

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<sup>4</sup> Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Actions*, Chapter 6.200.6. (September 1994); 20 C.F.R. §§ 10.434; 10.436.

<sup>5</sup> *Id.* at Chapter 6.200.6(b)(3).

<sup>6</sup> 20 C.F.R. § 10.432 provides that evidence in response to an overpayment notice must be presented within 30 days of the date of the written notice of overpayment.